

REMARKS

Applicant respectfully requests reconsideration and allowance of claims 1, 7, 9, 10, 12-14, 17-21, and 35-42 that are pending in the application. Applicant has amended claims 1, 7, 9, 10, 12-14, 17-21, and 35-42, and cancelled claims 43-44 herein. No new matter has been added by way of these amendments, as support for the amendments can be found in the specification as filed.

Claim Numbering

At page 2 of the Office Action, the Examiner required that claims 25-34 be renumbered as claims 35-44. As the numbering of claim 25-34 in the prior amendment was clearly in error, Applicant has renumbered such claims as required by the Examiner.

Objections to the Claims

At pages 3-6 of the Office Action, the Examiner objected to claims 7, 9, 10, 12-14, 17-21, and 35-44 as to a number of formalities. In response, Applicant has amended claims 7, 9, 10, 12-14, 17-21, and 35-42 in ways that address each of the Examiner's objections. Claims 43-44 have been cancelled and thus the objections thereto are moot. Accordingly, Applicant respectfully requests that the objections to the subject claims be withdrawn.

Claim Rejections Under 35 U.S.C. § 102

In numbered parts 5-6 of the Office Action, the Examiner rejected claims 1, 7 and 35 under 35 U.S.C. § 102(b) as being anticipated by U.S. 6,089,228 ("the '228 patent"). Applicant respectfully traverses this rejection.

Independent claims 1 and 35 recite, inter alia: "an auxiliary energy source in the form of a pressure medium system in communication with the multidose blister container for supplying the powder formulation, wherein upon activation of the pressure medium system, a gaseous pressure medium is released into the multidose blister container for supplying the powder formulation, and forms an aerosol with the powder formulation in such a way that powder particles are present in dispersed form within the gaseous pressure medium prior to entering the Laval nozzle, entering the mouthpiece, and leaving the dry powder inhaler." (Emphasis added.)

The Examiner cites FIG. 12b of the '228 patent as disclosing the above-quoted features of independent claims 1 and 35 of the instant application. A close analysis of FIG. 12b and related text of the specification of the '228 patent, however, reveal that this newly cited portion of the '228 patent is merely cumulative to other portions of the '228 patent that have already been successfully distinguished.

Applicant will first discuss FIGS. 1-2 and 4A and related text of the '228 patent (which have previously been successfully distinguished), and then demonstrate why newly cited FIG. 12b is merely cumulative and, therefore, ineffective as anticipatory subject matter.

As has been discussed in previous communications with the U.S. Patent Office, column 13, lines 28-48; column 14, lines 31-49; and FIGS. 1-2 and 4A of the '228 patent disclose that a vacuum is used to draw the medicament from the receptacle 12, through the feed tube 40, and through the throat 18 (outlet). The vacuum is created via a Venturi nozzle in which a gas source 20 provides gas via gas conduits 54 into an area downstream from the throat 18. Thus, the medicament reaches the throat 18 by vacuum (not by pressure as claimed). Additionally, the gas source 20 of the '228 patent does not communicate with the supply of the medicament (i.e., the receptacle 12). In contrast, the device as claimed recites the "auxiliary energy source in the form of a pressure medium system in communication with the multidose blister container for supplying the powder formulation". This is what produces "powder particles . . . within the gaseous pressure medium prior to entering the Laval nozzle . . ." as claimed.

Newly cited FIG. 12b of the '228 patent is nothing more than the functional and structural equivalent to the structure of FIGS. 1-2 and 4A. Indeed, column 15, lines 63-66, and column 17, lines 31-32 expressly recite that the embodiments of FIGS. 7-9, and FIG. 12b are functional and structural equivalents. A study of the disclosed structure and related text reveals that the author

of the '228 patent is correct. Thus, the embodiment of FIG. 12b of the '228 patent also operates to produce a vacuum via a Venturi nozzle in which a gas source provides gas via gas conduits at 114 into an area downstream from the throat or feed tube 106. The medicament of the '228 patent, irrespective of the embodiment under consideration (FIGS. 1-2, 4A, 7-9, 12a-12c, etc.) reaches the throat by vacuum (not by pressure as claimed). The gas source of the '228 patent does not communicate with the supply of the medicament (i.e., the receptacle R).

Thus, Applicant respectfully submits that independent claims 1 and 35, as well as dependent claim 7, are not anticipated in view of the '228 patent. Accordingly, Applicant respectfully requests that the § 102(b) rejection be withdrawn.

In numbered part 7 of the Office Action, the Examiner rejected claims 43-44 under 35 U.S.C. § 102(b) as being anticipated by U.S. 2001/0029948. As claims 43-44 have been cancelled, this rejection is moot.

Claim Rejections Under 35 U.S.C. § 103(a)

In numbered parts 8-12 of the Office Action, the Examiner rejected: (1) claims 9, 12-13, 18 and 20 under 35 U.S.C. § 103(a) as being obvious over the '228 patent alone and/or in combination with U.S. 2,693,805; (2) claims 10 and 13-14 under 35 U.S.C. § 103(a) as being obvious over the '228 patent in combination with U.S. 6,443,152; (3) claims 17 and 38 under 35 U.S.C. § 103(a) as being obvious over the '228 patent (as applied to claim 1); and (4) claims 18, 21, 36, 37, 39, and 40-42 under 35 U.S.C. § 103(a) as being obvious over the '228 patent in combination with U.S. 6,513,345.

Applicant traverses the above rejections. The deficiencies of the '228 patent as concerns claims 1 and 35 of the instant application were discussed above. As the teachings of the additional references that the Examiner alleges are combinable with the '228 reference do not cure such deficiencies, Applicant respectfully requests that the obviousness rejections of the subject claims be withdrawn.

Conclusion

In view of the foregoing, Applicant submits that the pending claims are in condition for allowance. Early and favorable action is earnestly solicited. In the event there are any fees due and owing (or refundable) in connection with this matter, please charge (or refund) same to our Deposit Account No. 11-0223.

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